

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

GABRIEL S. OWEN, #1159390,

Petitioner,

v.

ACTION NO. 2:19-cv-315

HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a petition for a writ of habeas corpus, ECF No. 5, filed pursuant to 28 U.S.C. § 2254, and the Respondent's motion to dismiss, ECF No. 18. On June 13, 2019, Petitioner was sentenced in the Circuit Court for the City of Chesapeake for violating his probation and was sentenced to two years and two months of an active sentence in a Detention and Diversion Program. ECF. No. 17. In his petition, the *pro se* Petitioner challenges the calculation of the sentence imposed by the Chesapeake Circuit Court.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and

Recommendation entered on November 30, 2020, the Magistrate Judge recommended the motion to dismiss be granted, and the petition be denied and dismissed without prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. Neither the Petitioner nor the Respondent filed objections with the Court and the time to do so has expired.


Having reviewed the record and having heard no objection, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 21, in its entirety as the Court's own opinion. Accordingly, the Respondent's motion to dismiss, ECF No. 18, is **GRANTED**, and the Petition, ECF No. 5, is **DENIED** and **DISMISSED WITHOUT PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent.

Finding that the procedural basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is **DIRECTED** to forward a copy of this Order to Petitioner and counsel of record for Respondent.

It is so **ORDERED**.

  
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Mark S. Davis  
Chief Judge

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Mark S. Davis  
Chief United States District Judge

Norfolk, Virginia  
Date: *January 21, 2021*